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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,476	01/02/2001	Joan L. Carbrey Palango	ALPINE.001AUS	4172

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EXAMINER

POND, ROBERT M

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/752,476	Applicant(s) CARBREY PALANGO ET AL. SP	
	Examiner Robert M. Pond	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The Applicant amended Claims 1, 5, and 16-17 to add an essential feature of the invention. All pending claims (1-18) were examined in this non-final Office Action necessitated by rejection under 35 USC 101 and 35 USC 112 second paragraph not previously cited.

The Applicant amended the Abstract to include an essential feature of the invention.

Response to Arguments

Rejection under 35 USC 103(a)

Applicant's arguments filed 06 July 2004 have been fully considered but they are not persuasive. Henson and Crutchfield demonstrate products prior to building a system. Specifically, Crutchfield takes the mystery out of shopping for a system by taking the shopper to a demonstration page on "How to build a system" or to details that demonstrate how a product performs (please see U: at least page 1).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A page or screen is an arrangement of non-functional descriptive material.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 1-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

The Applicant is claiming software code. Claims to computer-related inventions that are clearly nonstatutory fall into the same general categories as nonstatutory claims in other arts, namely natural phenomena such as magnetism, and abstract ideas or laws of nature that constitute "descriptive material." Abstract ideas, *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759, or the mere manipulation of abstract ideas, *Schrader*, 22 F.3d at 292-93, 30 USPQ2d at 1457-58, are not patentable. Descriptive material can be

characterized as either “functional descriptive material” or “nonfunctional descriptive material.” In this context, “functional descriptive material” consists of data structures and computer programs that impart functionality when employed as a computer component. (The definition of “data structure” is “a physical or logical relationship among data elements, designed to support specific data manipulation functions.” The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) “Nonfunctional descriptive material” includes but is not limited to music, literary works and a compilation or mere arrangement of data.

Both types of “descriptive material” are nonstatutory when claimed as descriptive material per se. *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir.1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). When nonfunctional descriptive material is recorded on some computer-readable medium, it is not statutory since

no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make it statutory. Such a result would exalt form over substance. In re Sarkar, 588 F.2d 1330, 1333, 200 USPQ 132, 137. (CCPA 1978) (“[E]ach invention must be evaluated as claimed; yet semantogenic considerations preclude a determination based solely on words appearing in the claims. In the final analysis under 101, the claimed invention, as a whole, must be evaluated for what it is.”) (quoted with approval in Abele, 684 F.2d at 907, 214 USPQ at 687). See also In re Johnson, 589 F.2d 1070, 1077, 200 USPQ 199, 206 (CCPA 1978) (“form of the claim is often an exercise in drafting”). Thus, nonstatutory music is not a computer component and it does not become statutory by merely recording it on a compact disk. Protection for this type of work is provided under the copyright law.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-18 are rejected under 35 USC 103(a) as being unpatentable over Henson (Paper #5, patent number 6,167,383), in view of Crutchfield (Paper #5, PTO-892, Item: U).**

Henson teaches a web-based online store used by consumers to configure electronic products comprising a main system, sub-systems, and components (see at least abstract; Fig. 1(10); Fig. 2 (10, 38, 40); col. 2, line 60 through col. 3, line 54). Henson further teaches:

- Main system page: features page with main system and image: (see at least Fig. 3A; Fig. 4; col. 5, lines 32-35).
- Subsystem page: e.g. memory, monitors, speakers; relationship information (see at least Fig. 3A-3b).
- Components page: e.g. memory; relationship information (see Fig. 5 (92); col. 9, lines 31-33).
- System connection: consumer connects to the web-based online store over the Internet (see at least Fig. 2 (10, 38, 40); col. 5, line 66 through col. 6, line 4).

- System validates selection: customer chooses subsystems and components recommended by the system; system validates selections (see at least col. 5, lines 28-54; col. 7, line 57 through col. 9, line 8).
- Check-out page: (see at least Fig. 1 (20); Fig. 6 (102); col. 9, lines 26-39).
- Item pricing and total: (see at least Fig. 4 (70); Fig. 6 (104); col. 9, lines 26-39).
- Displaying based on price: e.g. memory (see at least Fig. 5 (92)).
- Vehicle information page:

Henson teaches all the above as noted under the 103(a) rejection and teaches a web-based online store used by consumers to configure electronic products, but does not disclose a vehicle information page. Crutchfield teaches a web-based online store used by consumers to configure electronic audio products and home electronic products, and further teaches a vehicle information page that allows the system builder to "show the items that fit" (e.g. dashboard openings) (Item: U, pages 1 and 17) (please note the examiner considers Crutchfield to provide a teaching pertinent to Henson in light of the fact that both teach a system builder for configuring electronic products). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system of Henson to include a web store for electronic audio products and a vehicle information page as taught by Crutchfield, in order to determine compatible electronic audio products that fit a particular vehicle,

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and thereby attract consumers desiring to purchase automotive electronic audio products for their vehicles.

- *Demonstration screen:*

Henson teaches all the above as noted under the 103(a) rejection but does not disclose a demonstration screen. Crutchfield teaches all the above as noted under the 103(a) rejection and demonstrates products prior to building a system. Crutchfield teaches taking the mystery out of shopping for a system by taking the shopper to a demonstration page on "How to build a system" or to details that demonstrate how a product performs (U: see at least page 1). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Henson, to provide a demonstration screen to instruction a customer how to build a system or a demonstration screen on how a product works as taught by Crutchfield, in order to help customers better understand how to use the system and better understand how products work, and thereby attract customers the service.

- *Hierarchical ordering:*

Henson teaches all the above as noted under the 103(a) rejection and teach a consumer making a selection from a main page which then presents a subsystem page and components page, but does not clearly convey hierarchical order to the component level. Crutchfield teaches all the above as noted under the 103(a) rejection and teaches hierarchical

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ordering (e.g. Car Audio, In-Dash CD Receivers, Accessories) (Item: U, see at least pages 1, 10, and 14). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system of Henson to include hierarchical ordering for products as taught by Crutchfield, in order to help customers find products, and thereby attract consumers desiring to purchase electronic products.

- *Subsystem and component Image displaying*

Henson and Crutchfield teach all the above as noted under the 103(a) rejection and teach displaying main system images, but do not disclose displaying an image of every subsystem and component. It would have been obvious to one of ordinary skill in the art at time of the invention to display every subsystem and component, since it is well within the skill to ascertain that since the system is capable of displaying main system images, the system is therefore capable of displaying subsystem and component images.

Pertaining to Claims 17 and 18

Please note Claims 17 and 18 are rejected based on similar rationale.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mr. Robert M. Pond** whose telephone number is 703-605-4253. The examiner can normally be reached Monday-Friday, 8:30AM-5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Ms. Wynn Coggins** can be reached on 703-308-1344.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to:

703-872-9306 (Official communications; including After Final communications labeled "Box AF")

Hand delivered responses should be brought² to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.



Robert M. Pond
Patent Examiner
October 14, 2004